

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re: OXYCONTIN ANTITRUST LITIGATION**

This Document Relates To:

Louisiana Wholesale Drug Co., Inc.,  
Civil Action No. 04-CV-00229 (SHS)

Rochester Drug Cooperative, Inc.,  
Civil Action No. 04-CV-00327 (SHS)

Meijer, Inc.,  
Civil Action No. 04-CV-00494 (SHS)

Valley Wholesale Drug Co., Inc.,  
Civil Action No. 04-CV-01014 (SHS)

SAJ Distributors, Inc.  
Civil Action No. 04-CV-01354 (SHS)

Walgreen, et.al.,  
Civil Action No. 04-CV-01446 (SHS)

Albertson's, et.al.,  
Civil Action No. 04-CV-09649 (SHS)

CVS Pharmacy, Inc and Rite Aid Corporation,  
Civil Action No. 04-CV-03719 (SHS)

NeighborCare, Inc.,  
Civil Action No. 04-CV-03156 (SHS)

Care Pharmacies, Inc.  
Civil Action No. 04-CV-3890 (SHS)

Medic Drug, Inc.  
Civil Action No. 04-CV-04574 (SHS)

04-MDL-1603 (SHS)

ECF CASE

**DECLARATION OF BRUCE E. GERSTEIN  
IN SUPPORT OF DIRECT PURCHASER CLASS PLAINTIFFS' AND NON-CLASS  
PLAINTIFFS' MOTION TO LIFT THE STAY**

I, BRUCE E. GERSTEIN, an attorney duly admitted to practice before the courts of New

York, declares as follows:

1. I am a partner in the law firm of Garwin, Gerstein & Fisher LLP, Co-Lead Counsel for Direct Purchaser Class Plaintiffs in the above captioned action.
2. I submit this Declaration in support of Direct Purchaser Class Plaintiffs' and Non-Class Plaintiffs' Motion to Lift the Stay of this antitrust litigation, and attach copies of the following documents:
  3. Exhibit A: MANUAL OF PATENT EXAMINING PROCEDURE (8th Ed. Sept. 2007 revision) § 2142;
  4. Exhibit B: The Patent and Trademark Office's rejection of claims 1-17, dated April 30, 1992;
  5. Exhibit C: MANUAL OF PATENT EXAMINING PROCEDURE (8th Ed. Sept. 2007 revision) § 716.01(a);
  6. Exhibit D: Response of Steinberg and Raskin to the April 30, 1992 rejection of claims 1-17, dated October 22, 1992.
  7. Exhibit E: The Patent and Trademark Office's Examiner Interview Summary Record discussing claims 1-17, dated November 27, 1991;
  8. Exhibit F: Declaration of Dr. Robert Francis Kaiko, Vice President, Clinical Research for the Purdue Frederick Company regarding controlled release oxycodone compositions, dated March 9, 1993.
  9. Exhibit G: MANUAL OF PATENT EXAMINING PROCEDURE (8th Ed. Sept. 2007 revision) § 716.01(c) ;
  10. Exhibit H: MANUAL OF PATENT EXAMINING PROCEDURE (8th Ed. Sept. 2007 revision) § 716.02(g);

11. Exhibit I: 1989 Article authored by Robert F. Kaiko, PhD, *et al*, entitled "The United States Experience with Oral Controlled-Release Morphine (MS Contin Tablets)".

12. Exhibit J: 1998 Article entitled "Controlled-release oxycodone compared with controlled release morphine in the treatment of cancer pain: a randomized, double-blind, parallel group study".

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22<sup>nd</sup> day of February, 2008.

/s/ Bruce E. Gerstein  
Bruce E. Gerstein